UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JANE DOE, et al.,

Plaintiffs,

v. 18 Civ. 9936 (LGS)

THE TRUMP CORPORATION, et al.,

Defendants.

Conference

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New York, N.Y.
December 20, 2018
11:40 a.m.

Before:

HON. LORNA G. SCHOFIELD,

District Judge

APPEARANCES

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-and-
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(Case called)

MS. KAPLAN: Good morning, your Honor, for the plaintiffs, Roberta Kaplan from the Kaplan Hecker firm, and I'm here with my colleague, John Quinn.

MR. QUINN: Good morning.

THE COURT: Good morning.

MR. CELLI: Good morning, your Honor. I am Andrew Celli from Emery Celli Brinckerhoff & Abady. I'm here with my partner, Matthew Brinckerhoff.

THE COURT: Good morning. You may be seated.

MR. SPEARS: Good morning, your Honor, David Spears from the law firm of Spears & Imes. I'm here with my colleagues, Brad Pollina and Cynthia Chin.

THE COURT: Good morning. You may be seated.

We are here for an initial conference in this case. There are various things that I want to discuss.

First of all, thank you for your joint letter which lays out the issues, I thought, well. I would like to talk about the motion to dismiss. I know that I only have the letter from the defendants. I don't have the letter from the plaintiffs. Since it was due tomorrow, I assume you know what you're putting in the letter. I would like to hear about that.

And then I would like to talk about the plaintiffs' motion for leave to proceed under a pseudonym.

Finally, I would like to talk about the motion to stay

discovery.

Why don't we just begin with a little background. I have not read the complaint. I have read your joint letter. I have a sense of what the case is about. But I would love to hear a little bit about it and where you expect it to go.

MS. KAPLAN: Your Honor, if I may, I am going to have my partner, Mr. Quinn, address that.

MR. QUINN: Your Honor, would you like me to take the podium?

THE COURT: Wherever you are more comfortable, as long as you speak into a mic because the acoustics are not good.

MR. QUINN: Very well, your Honor. Thank you.

Briefly put, your Honor, the complaint brings a putative class action on behalf of a large class. There are four representative plaintiffs who have sought the Court's permission to proceed under pseudonym.

The allegations of the complaint, the first count of the complaint or the first claim asserted is a RICO claim. There are two distinct RICO theories. One is an association in fact theory involving an association comprised of the defendants, as well as a number of other entities within the umbrella of companies that do business under the name the Trump Organization. There is also a distinct legal enterprise theory that the Trump Corporation itself operates as a RICO enterprise controlled by the defendants.

The theory of the case fundamentally, your Honor, is that the defendants, acting through this enterprise, perpetrated a pattern of racketeering activity which involved essentially defrauding consumers through fraudulent endorsements and promotions of a series of consumer-facing so-called business opportunities or training programs.

Effectively --

THE COURT: If I can interrupt for just one minute. The predicate acts are, I assume, mail fraud and wire fraud?

MR. QUINN: Among other things, your Honor, that's correct.

THE COURT: And the others?

MR. QUINN: The complaint also alleges certain violations of state consumer protection and fraud loss.

THE COURT: In terms of predicate acts and finding underlying criminal violations.

MR. QUINN: Correct. Under the federal RICO standard, the predicate acts are mail and wire fraud, your Honor. That's correct.

Essentially, the theory of the case is that defendants were paid in secret by a series of third-party companies to offer their endorsements without disclosing the payments and to then make a series of false or misleading statements about the nature of these businesses, the nature of the business opportunities or training programs that they were offering to

consumers, as well as the nature of the defendants', plural, own relationship with those third-party entities and the extent of the defendants' own diligence and the basis for the statements that they were making.

The common theme among all of the plaintiffs, and we expect ultimately among all members of the class, was that they understood from repeated and consistent messages that were delivered by the defendants, acting through the enterprise and through a series of mediums, they understood the defendants were making a genuine endorsement. They did not understand that defendants were being paid to make that endorsement. They believed that the defendants had done extensive diligence and/or had access to inside information or had a relationship with these third-party businesses.

THE COURT: Who actually made the endorsements or false statements?

MR. QUINN: The vast majority of them, your Honor, were made by defendant Donald J. Trump himself, President Trump, who appeared on stage at events promoting these businesses, filmed promotional videos that were widely used to recruit consumers.

THE COURT: What did the other defendants do?

MR. QUINN: The other individual defendants, your Honor, were involved in two principal ways.

One, they also lent their own implicit endorsements

appearing on television alongside the founders of some of these businesses and otherwise appearing in promotional and other materials.

The second way was that they were actively involved in the operation of the enterprise. They helped direct where funds went, negotiate contracts, secure the payments, and then maintain --

THE COURT: How do you know that? I presume you know what your clients know, but they don't know the inner workings, I presume, of the business relationship. How do you know that?

MR. QUINN: That's absolutely right, your Honor. A large portion of the complaint is based on news sources which have documented some of this. We have also been able to get access to and copies of promotional materials and other materials, including videos of episodes of the Celebrity Apprentice, where these businesses paid to be featured, for example.

THE COURT: I noticed from the defendants' letter that they point out that your clients all basically entered into a contractual relationship with a company called ACN based on these allegedly false statements and endorsements. Is there any separate action against ACN?

MR. QUINN: There is no action pending, your Honor, nor have we brought one.

The theory of this case is that the cause of the

plaintiffs' investments and ultimately the cause of their loss was the false and misleading statements made by the defendants.

Each of the four plaintiffs says, and this is alleged in the complaint, that they would not have made these investments if not for what they believed to be a genuine endorsement by the defendants acting through the enterprise, and that that was the principal reason that they bought in and that ultimately, as they realized the truth behind the false and misleading statements that had been made, that was the reason they decided to cut their losses and get out.

THE COURT: What was the truth?

MR. QUINN: The truth, your Honor, as far as we know, that the defendants had done essentially no diligence and that their statements that these things had been vetted by the defendants were untrue, that the defendants did not have -- that the nature of their relationship with these companies was not as disclosed, that the defendants had been paid handsomely, sometimes to the tune of millions of dollars, for each of these appearances or statements, which wasn't disclosed, and, at its core, that the business opportunities and training programs did not offer to these consumers the value that the defendants claimed that they did.

THE COURT: Are there other cases where essentially someone says, this is a good idea, you should do it, and then a cause of action arises as to that person?

MR. QUINN: We believe there are, your Honor. We will, of course, go into this in more detail both in our premotion response letter as well as in briefing.

One analogy, your Honor, would be some of the WorldCom cases or penny stock cases where you don't necessarily go after the now-bankrupt company that you were misled into investing. You go after the promoter who was being secretly paid to tell you that it was a good investment, despite knowing the opposite to be true. I think that's one example, your Honor, of that same theory being used in a different context.

THE COURT: I gather what you presume will happen or hope will happen is that the motion to dismiss will be denied, that discovery will proceed either before or after the decision on the motion, that you will complete discovery, and then move for class certification.

I saw in your letter that you also have the intention, regardless of what happens with class certification, to continue to represent your individual clients. Is all of that more or less right?

MR. QUINN: Reserving all rights, your Honor, that is absolutely right at present as to our expectations and intentions, particularly on that last point. We intend to proceed whether or not a class is certified.

THE COURT: I'll hear from the defendants.

MR. SPEARS: Thank you, your Honor.

Your Honor, I think we have a very strong motion to dismiss as to the two federal causes of action, federal question causes of action, Counts One and Two, RICO, 1962(c) and RICO conspiracy, 1962(D). We just don't think the case is sustainable because as to all of the claims they allege fraud and so 9(b) applies to all of them. So the requirements of *Iqbal* and other similar cases, related cases about pleading for particularity, apply, and they cannot meet that standard.

THE COURT: And Rule 9.

MR. SPEARS: And Rule 9.

They cannot meet that standard. They allege that without any specificity as to when or where they heard Mr. Trump only. They don't allege that any other defendant ever made any statement. They allege that Mr. Trump said he loved the company, that it was a great opportunity, that it's a chance to be an entrepreneur without having to put up with what entrepreneurs typically have to put up with, opinion statements, some puffery. These aren't actionable statements, and they have not even pleaded when the statements were made or where.

Plaintiff Doe, Jane Doe, doesn't know when she invested. It could have been mid 2014, it could have been late 2014. We just don't think there is any actionable statement --

THE COURT: Let me interrupt there for just a moment. In terms of false statements, I presume that that's something

that the plaintiffs could cure one way or another. Are there deficiencies in the complaint that are essentially uncurable as a matter of law?

MR. SPEARS: I think that the failure to plead loss causation is uncurable as a matter of law. They say Mr. Trump said this is a great opportunity and they relied on that. They may not have said that they relied on it, but that that was important to them.

Their failure to be successful at what they undertook with ACN, there may have been a multitude of causes for that. The fact that they would prove it wasn't a great opportunity and that that was the reason for their loss, we don't think loss causation can be cured.

THE COURT: What about the statement or assertion I just heard, which is that each of the plaintiffs will say I would never have invested, I would not have gone near this thing if I had not heard endorsements?

MR. SPEARS: His endorsement still needs to be an actionable misstatement or an actionable omission. They are incredibly vague about what they remember him saying to them. I hear your Honor about, they can presumably cure that, but I'm not just cynical enough to believe that they will be dismissed on Rule 9(b) grounds and then come back and, all of a sudden, remember very specifically something he said that was an actionable misstatement or omission.

They were exposed to a variety of materials, a variety of representations about ACN by all sorts of people. Ms. Doe says that Mr. Loe got her involved and was enthusiastic about it. In the absence of any statement --

THE COURT: Just a factual question then. Are you saying that there were endorsements by all sorts of people, not just the Trumps?

MR. SPEARS: I don't know about endorsements, but there were statements made to them in ACN promotional materials by the people who actually recruited them, the ACN IBOs, they were called, who actually recruited them.

THE COURT: What does that stand for?

MR. SPEARS: I beg your pardon?

THE COURT: IBO, what does that stand for?

MR. SPEARS: Independent business owner.

THE COURT: These are basically the plaintiffs.

MR. SPEARS: I beg your pardon?

THE COURT: The plaintiffs were all IBOs?

MR. SPEARS: Yes.

Before they became involved, they were exposed to all sorts of representations about the business, what it involved. Mr. Trump's statements were typically -- at a handful of ACN events he said on stage he was interviewed by somebody, and he talked about his business and his failures and his own bankruptcy and how much he learned from failure and how

everyone can learn from failure. He told anecdotes about his life in business, and, coincidently, he said he loved the founders of ACN. They were great guys. They built a great company. He loved their technology.

THE COURT: If I could interrupt again one second. I noticed in your letter you said that it was not concealed that the defendants were paid for their endorsements.

MR. SPEARS: Correct.

THE COURT: What are the facts around that?

MR. SPEARS: There are multiple facts, your Honor. Mr. Trump, in one of his interviews that was published in a magazine, he said that he had just entered into a new contract with ACN relating to his endorsements for the company. Plaintiffs say in their complaint, actually allege that when he endorsed the company, they assumed any serious businessman would do due diligence on a company before it endorsed it.

Any reasonable plaintiff would assume that when Mr. Trump is talking about renegotiating his contract with ACN, he is talking about being paid money.

And there were other instances where he made similar statements or ACN made statements that clearly implied that he was being paid money pursuant to a contractual relationship with them. To the extent that he didn't come out and say --

THE COURT: I'm being paid for this statement. To the extent he did not say that, right?

MR. SPEARS: To the extent he did not come out and say, I am not being paid for the statement. He did not have a fiduciary relationship with these plaintiffs, and he had no obligation to tell people something like he had a fiduciary relationship. The question is whether he made a half truth, he made an omission that was a half truth.

As I said, your Honor, the complaint does not allege a single allegation that any other defendant ever said anything that was heard by any plaintiff. They never made any representation about ACN that could have been actionable that could be false. There is just nothing.

THE COURT: I'll just stop you there, if that's all right.

I will look forward to reading more in your briefs. But your letter was very interesting and that there is a serious motion to dismiss here.

Of course, I have not heard from the plaintiffs. They have not submitted their letter. If you would like to say something in response, I'm happy to hear it.

MR. SPEARS: Your Honor, not to fight the Court, I just want to say one sentence.

THE COURT: That's fine.

MR. SPEARS: On the state law claims there is no diversity because they don't meet the jurisdictional amount, and we think the same is true for the CAFA claim. Thank you.

THE COURT: I saw that in your letter. Thank you.

MR. QUINN: Just to make a couple of brief points, your Honor.

First, on that last point, and again we will set this out more thoroughly in our letter, but our view is that the defendants' argument with respect to the diversity and CAFA issues is unduly narrow and unduly limited to economic damages, where there are bases to include other forms of damages in that evaluation.

THE COURT: What are the other kinds of damages?

MR. QUINN: Your Honor, punitive damages, for example, can count towards the threshold. On CAFA we think there is a strong basis here to believe that many thousands of people suffered the kind of damages that the plaintiffs alleged in the complaint.

THE COURT: What are ballpark damages for a single plaintiff here?

MR. QUINN: At least $500, which was the cost to buy in to the ACN business opportunity, and some of the plaintiffs here, and we expect many of the class members, also suffered thousands of dollars in losses as they pursued the investment on this false hope, and none of that was ultimately recouped. At least 500 into the thousands per class member.

THE COURT: What about the individual plaintiffs. About what was the quantum of their damages?

MR. QUINN: There is a range. Each of them has at least $500 in damages.

Jane Doe, for example, bought in with the $500, followed up again the next year with another $100 investment and took multiple trips to multiple conventions, each time being told that there was a good chance Mr. Trump would be there. She might have an opportunity to hear from him directly. She might have an opportunity to get the benefit of his supposed business acumen. And all of that didn't pan out. She will testify that she was sharing a hotel room with four other women and one of them was sleeping on a balcony. They were pouring every penny that they had into this on the word of the defendants, and they lost all of it.

If I can make a couple of points about the legal argument. As to the specificity of the pleadings, respectfully, the complaint is replete with detailed specifics, events, dates, specific videos, Celebrity Apprentice episodes. There is great specificity and a tremendous number of quotations. A substantial portion of the complaint is --

THE COURT: What about specificity as to the other two defendants?

MR. QUINN: There, your Honor, again, the primary way in which the other individual defendants were involved was in the operation of the enterprise itself, and there is specificity there as to their positions at various entities

within it as well as testimony from a former chief financial officer of the Trump Organization who explains that these individual defendants were among a very small group of people who had the authority to sign checks over various constituent entities within the enterprise. And there are other facts that we continue to try to develop, your Honor, on this.

As to the plaintiffs themselves, also each plaintiff, we do allege where they heard the Trump endorsement, what they understood the message to be. Now, it is the case that in not each of those instances are we able to quote precisely what they heard. We expect discovery will give us those specifics. But we have alleged all the specifics we can, and in many instances that includes describing what hotel they were sitting at in what month of what year when they saw which video and what they understood defendant President Trump to be saying.

On that point, your Honor, I would refer the Court, respectfully, to the Second Circuit's decision in *United States v. Autuori*, which is 212 F.3d 105. This is a Second Circuit decision from 2000, a criminal case, where the Court held there was sufficient evidence to convict an accountant for mail and wire fraud based on statements that financial forecasts were, quote, good and, quote, credible, that the project was, quote, safe, that he, quote, stood behind the numbers.

Defendants are purporting to make a puffery argument that these statements are more sufficient in the context of a

criminal case, and of course we are here in a civil case.

Briefly, your Honor, on loss causation, again, there are express allegations in the complaint, and I would refer the Court to paragraph 19, where we explain that each of these plaintiffs would not have bought in but for the defendants' statement and that it was precisely the untruth in the defendants' statement that got them in and. Once they learned the truth, that was when they were able to cut their losses and get out. We respectfully argue that that satisfies both but for --

THE COURT: How did they learn the truth?

MR. QUINN: Their own experience, primarily, really from suffering this for two or more years and realizing that they simply couldn't make money and they couldn't in good conscience try to recruit others into this scheme.

Very briefly, as to whether a reasonable consumer would assume that Mr. Trump was being paid, first of all, it's obviously a question of fact, in our view, your Honor.

Moreover, and again this is alleged in detail in the complaint, the defendant said over and over again that his endorsement was not for any money. In one of the interviews that Mr. Spears referred to, he was asked: What makes you keep coming back to support this company? Surely it's not the money. He said: No. What a great company this is. I believe in this company.

Those kind of statements, your Honor, are so profoundly misleading to someone, particularly someone economically vulnerable, sitting on their couch, watching a YouTube video, trying to think, how can I get ahead? How can I start a business? They looked up to the president, not the then president, but they looked up to Mr. Trump.

Those kinds of statements that he wasn't there for any money were tremendously misleading, and they create a duty under Second Circuit law to make the disclosure and to make clear what's really going on, and that wasn't done here, as I think defendants have practically conceded.

I would also add that the FTC itself has over and over explained that the effect that celebrity endorsements can have and has required really clear disclosure, and that disclosure was totally lacking here.

With that, your Honor, unless the Court has any further questions, we look forward to putting in our letter tomorrow.

THE COURT: I look forward to your letter as well as your brief. I don't think we need to have another -- that's fine.

You don't need to respond because we don't even have a response to the premotion letter. We don't have a motion. I just wanted to hear more about it from both sides.

The schedule that's been proposed, is that a joint

proposal?

MR. SPEARS: Yes, your Honor.

THE COURT: I'm going to trim it just a little bit for two reasons: One is, I like to get papers filed within 60 days; and the other is, I think that it would be better for all concerned if your papers were due on a Friday instead of a Monday. It means you will not spend the weekend in the office doing it. The other side may want to peruse it over the weekend.

The filing date of January 14 is fine. Why don't we make the response date February 22.

Let's say March 8 for a reply.

I'll do a scheduling order so there is no question on what the dates are. With regard to that, as well as anything else, if I say something and I issue an order and they are inconsistent, please follow the written order.

That, I think, is enough said about the motion to dismiss.

What I'd like to talk about next is the motion for leave to proceed under pseudonyms. That is a motion that is fully briefed. It was filed at the same time as the complaint. I have reviewed your papers.

I have just one question. I know the plaintiffs have tried to talk to the defendants about this, have offered to proceed on a lawyers'-eyes-only basis. There essentially have

been no discussions.

Mr. Spears, you want to tell me about that.

MR. SPEARS: Sure. We discussed this in a telephone call in December. I believe we put that in the joint submission that was made. Plaintiffs raised it. We told them we weren't interested in it. We told them why.

There has only been one proposal made and that is counsel's eyes only. The individual defendants can't see it and presumably no one else can see it. That doesn't work for us because we can't take effective discovery without being able to share the information with our clients.

THE COURT: Why is that? The three individual defendants, what do they need to know in order to take discovery?

MR. SPEARS: Because one important thing we would do, your Honor, as a first step in investigating is try to determine if there have been any interactions with any of those individuals in the past, whether there have been any electronic communications with those individuals, whether there have been --

THE COURT: I don't think there is any allegation that there has been any direct contact, at least that the defendants would be aware of.

MR. SPEARS: Your Honor, there could have been interactions at a Trump enterprise, job applications.

THE COURT: Just to be clear, we are talking about, as I understand it, a mother of three who works in a large retail store, a hospice worker, a delivery food driver, I forget who the fourth one is. These are, I presume, not people who the Trumps are going to know and remember.

MR. SPEARS: They may not know and remember them, but there may have been a record created somewhere of bias on their parts.

THE COURT: Give me another reason. Is there another reason?

MR. SPEARS: Yes. We would exhaustively check social media to see if there is any indication of bias on the part of these people.

THE COURT: You can still do that without telling your clients what the names are.

MR. SPEARS: Your Honor, we represent individuals. It's important to discuss what you find to get feedback, to get ideas about places to look, things to do. We don't presume to do things on behalf of our clients without getting authorization and getting feedback and working jointly.

Another thing we would want to do that's critically important is reach out to ACN and say, here are four names. Please give us everything you have with regard to your interactions with these people.

THE COURT: You can still do that without your clients

knowing the people's names.

MR. SPEARS: That's not clear to me. Once we start getting into third parties, I guess you'd have a protective order or confidentiality agreement with them.

But we would also want to take discovery potentially from family members and from friends. The plaintiffs may have said things to other people around him about why they were making a decision like this. It may be very important.

THE COURT: Let me reframe the question. Is there any reason why you would be prejudiced if I granted the motion at least until my decision on the motion to dismiss? Presumably, this case has a long life.

MR. SPEARS: And discovery was going on?

THE COURT: There are two alternatives. In one scenario, yes; in one scenario, no.

MR. SPEARS: Your Honor, if you did not order plaintiffs to refile with their own names in it and discovery was stayed, I'd have to think about it as any potential prejudice to defendants would be drastically reduced. If we are in discovery, they say they want a six-month discovery period, we would need the names immediately. We have work to do. All of that would take time. ACN is not is going to be able to come up with this stuff overnight. If there were a continuation of the present status while discovery is going on, we would suffer prejudice every day.

That's our position, your Honor.

THE COURT: If discovery were going on. I understand that.

I'll hear from the plaintiffs.

MS. KAPLAN: Your Honor, I think I can be brief, given the issues that you raised.

With respect to the offer to meet and confer on this, as your Honor obviously knows, negotiation is a two-way street. We would have been happy to talk about other alternatives, but Mr. Spears made it very clear that he wasn't willing to talk to us about it.

As we made very clear in our papers, the main concern that our clients have is that their names not be publicized in a way that these very marginalized, quite poor people face threats, face doxing, face things that unfortunately today happen.

Your Honor, I spent last night and this morning reading every case in this area. To be honest with you, there isn't a case directly on point because we have never been in this situation before in which plaintiffs face this risk and they can't even deny that.

One, we would certainly be willing to give it to plaintiffs' counsel on an attorneys'-eyes-only basis. We are willing to talk about other things. It's the public nature of it that we are concerned about. Yeah. I'm here.

THE COURT: What if there were an agreement that it were attorneys' eyes only and they could share it with their clients, but a protective order so that the clients couldn't disclose it?

MS. KAPLAN: I think we would be amenable to doing something like that, your Honor. In fact, the one question Mr. Spears asked me is: Well, it's going to be a mess with filings. How are we going to deal with filings? I said: For now we just use the pseudonyms for filings. You will know which pseudonym translates to which person, so there shouldn't be any kind of undue burden in the clerk's office, but we would certainly be amenable to something like that. That really is our concern here, is protecting these people.

Two, as your Honor pointed out, these are not situations like in other cases and some of the other pseudonymous cases where the plaintiffs are alleging they had any direct interaction with Mr. Trump. And you yourself pointed it out, they are either watching a video or they are sitting at almost a religious-style convention and hearing him speak. None of them alleged they had any one-on-one conversations with him.

With respect to the subpoenas, because we very much want to get discovery ongoing, as your Honor appreciates, there are ways to deal with that with confidentiality orders and protective orders. We very much want discovery to happen, but

even if your Honor decides it should wait, we really want to make sure ACN is preserving its documents immediately, and so something needs to happen either by way of subpoena or at least a document-preservation subpoena with respect to ACN, because right now they are under no duty to preserve.

THE COURT: They are under a duty to preserve, but perhaps don't have as clear a notice as they could have.

MS. KAPLAN: Exactly, your Honor. Thank you.

THE COURT: I am prepared to rule on the motion.

Plaintiffs have filed a motion for leave to proceed under pseudonyms. The complaint is filed under pseudonyms.

Federal Rule of Civil Procedure 10(a) provides that "the title of the complaint must name all the parties." However, it is also clear that there are exceptions, although the bar is fairly high. The case I'm referring to is *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 188-89 (2d Cir. 2008). I find that plaintiffs have met their burden of showing that they should be permitted to proceed under pseudonyms at least until the motion to dismiss is decided, and we will talk about discovery in a minute.

There are several factors that the case I referenced identified as relevant to the inquiry, and I will discuss the factors that I think tip the balance in favor of allowing plaintiffs to proceed anonymously, at least for a relatively brief period.

The two factors that weigh most heavily in favor of plaintiffs are whether identification poses a risk of retaliatory, physical, or mental harm and whether identification presents other harms.

Plaintiffs fear that divulging their entities will put them at a substantial risk of harm. At this early stage in the litigation I cannot conclude that those fears are unfounded and, put differently, I find that the plaintiffs have met their burden of showing that they face at least risks of harm.

Plaintiff cited consistent pattern of past conduct that gives rise to a reasonable inference that they may suffer harm as a result of being identified in this action.

Defendants argue that any fear of retaliation is speculative and know that this case has not yet drawn any comments from the defendants.

But these arguments, I'm afraid, miss the point. What plaintiffs fear is some future conduct of the defendants and their supporters. Past conduct can give rise to some reasonable inference of future retaliation, but also the fact that a particular defendant has not yet commented publicly doesn't mean that that won't happen in the future.

Defendants also argue that plaintiffs' concerns must be particularized. Whether or not this is a correct statement of the law, plaintiffs here have offered particularized reasons in their briefing papers why revealing their identities would

put them at risk. The case has garnered considerable media attention and involves criticisms of defendants and their honesty and integrity. Plaintiffs have cited ample evidence of retaliation and other harms in other cases in similar circumstances, which is sufficient to meet their burden.

Finally, the manner in which the president has used his position and platform to affect the course of pending court cases, as Ms. Kaplan said, is really without precedent. Whether instigated by him or by his supporters, the harms at issue here are not hypothetical. They are real, significant, and present an unwarranted obstacle to those who would seek to vindicate their rights in federal court.

I understand that there is a right and a need, if we are going to conduct discovery, for there to be some information available to the defendants, but I believe that in light of all of these considerations, the second factor weighs strongly in favor of granting the motion.

Let me discuss briefly the other factors. One factor is possible prejudice to the defendants. I find that that weighs in favor of granting the motion.

The next step, as we have been talking about, is a motion to dismiss, and I don't believe it's necessary to know the identities of the plaintiffs for you to put forward the arguments that defendants have proposed.

Another factor is whether the plaintiffs' identities

have been kept confidential. That weighs in favor of granting the motion, and I would just say that the issue here is really, have their identities been kept secret. The answer is yes. But once that information is out of the bag, so to speak, there is no way to remedy it. There is no way to undo it. Given that factor, I think, also, at least briefly allowing the case to proceed anonymously is warranted.

The factor of any public interest in the disclosure also weighs in favor of granting the motion. Although there are important public aspects to this case, the public interest in knowing the specific identity of the named plaintiffs or the class members they would represent is minimal.

Defendants argue that if plaintiffs are allowed to proceed under pseudonyms "they would be able to indulge their worst instincts in the way they litigate this case."

This is wholly speculative. There is nothing that I have seen, at least in the papers so far and the parties' conduct to date, that would support that, and I frankly don't accept that knowing the name of the hospice worker, the food delivery driver, or the other named plaintiffs will affect the course of this litigation.

The final factor that weighs in favor of plaintiffs is that there is no alternative mechanism for protecting their confidentiality.

Frankly, Mr. Spears, I understand why you would not

want to proceed on a lawyers'-eyes-only basis, effectively being forced to keep secrets from your own clients, and particularly in this setting, and there are not any other good means to protect the plaintiffs' identities which are at issue here.

For those reasons, plaintiffs' motion for leave to proceed under pseudonyms is temporarily granted under adjudication of the motion to dismiss.

If the case survives, plaintiffs may renew the motion at that time.

MS. KAPLAN: Thank you, your Honor.

THE COURT: That brings us to the issue of discovery. What I heard Mr. Spears saying is that he believes that he would be dramatically prejudiced if discovery were to go forward.

Frankly, as I was thinking about this, and I'll hear from you again, Ms. Kaplan, on this, the reason I want to hear from Ms. Kaplan is I am inclined to stay discovery. And the reason is that if discovery were to go forward, I would have two concerns. One is that it would be largely unilateral discovery, meaning plaintiffs will be getting everything from the defendants, but not much information going the other way. And I'm also frankly concerned that once we start disclosing people's names that the cat does get out of the bag, so to speak, and then we are in a situation that I think the

plaintiffs did not want and events could get ahead of us.

Ms. Kaplan, do you want to be heard on that?

MS. KAPLAN: Yes, your Honor. I get to be a plaintiff in this case. I am not used to in my career being a plaintiff and plaintiffs, as your Honor knows, always want discovery.

We understand the concerns that your Honor raised, and I think our main concern, particularly the interplay between the pseudonymous issue and discovery, I was actually concerned about that this morning as I was thinking about this.

I think the main issue from our perspective, particularly with the tightened schedule on the motion to dismiss, I think our main concern is third parties.

In the *Emoluments* case in Maryland -- we can get you the order -- the Court there stayed discovery but allowed document preservation subpoenas to be served on third parties. I think if your Honor will permit that, that's our main concern at this point. We know that the parties aren't going to spoliate any documents, but we are concerned about ACN and the principals.

If your Honor would permit that, I think that would be a good compromise.

THE COURT: I will permit that. What I'd like you to do is confer with defendants, see if you can agree on a proposed form of order, and then send it to me. Probably the sooner the better. If you could send me a proposed form of

order by the close of business tomorrow, I will try to get it out quickly.

MS. KAPLAN: Absolutely, your Honor.

THE COURT: Is there anything else we need to discuss today?

One thing I will say. I have individual rules. They talk about filing motions. They have page limits. I talk about courtesy copies, all those sorts of things that will be useful for you to know. So please take a look at my individual rules.

Anything else?

MR. SPEARS: Your Honor, you just reminded me of one additional thing.

We would like to have up to 35 pages on our motion to dismiss. The complaint is 160 pages long, has 450 allegations.

THE COURT: But you want to say that it doesn't say anything, so how much would it take to do that?

MR. SPEARS: I want to say that none of the dozens of factual statements they attribute to Mr. Trump in there amount to an actionable statement in a fraud case.

THE COURT: Let's do this: 30, 30, and 12.

MR. SPEARS: Thank you, your Honor.

MS. KAPLAN: Deal, your Honor.

THE COURT: We are adjourned.

(Adjourned)